FILED
OCT 15 1984
ALEXANDER L. STEVAS
CLERK

No. 84-160

In the Supreme Court of the United States

October Term, 1984

THE BEAUFORT GAZETTE,
A SOUTH CAROLINA CORPORATION

PETITIONER

v.

KEITH MERRY DELOACH,

RESPONDENT

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

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TABLE OF AUTHORITIES

Cases:	Page
Bose Corp. v. Consumers Union of U.S., Inc. ___ U.S. ___, 104 S.Ct. 1049, ___ L.Ed. ___ (1984)	1,2
Deloach v. Beaufort Gazette Sup. Ct. S.C., Op. No. 22090, April 30, 1984	2

The fundamental shortcoming of the Brief in Opposition to Petition for Writ of Certiorari is that it fails to reconcile the requirement of independent and complete judicial review mandated by Bose Corp. v. Consumers Union of U.S., Inc., ____ U.S. _____, 104 S.Ct. 1949, _____ L.Ed. _____ (1984) with the one-sided and abbreviated review which the South Carolina Supreme Court undertook in the pending action. The clear language from the Bose case and the South Carolina Supreme Court's opinion adequately indicate the truly significant scope of the disparity.

Bose requires the following degree of judicial review:

> "The question whether the evidence in the record in a defamation case is of the convincing clarity required to strip the utterance of First Amendment protection is not

> merely a question for the trier of fact. Judges as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof of 'actual malice'."

Bose Corp. v. Consumers Union of U.S., Inc., supra at 104 S.Ct. 1965.

The opinion of the South Carolina Supreme Court states in no uncertain terms that its review was considerably less.

> "For the purpose of this appeal this court must view the evidence in the light most favorable to the plaintiff. That evidence raised a jury issue on a factual matter which had been settled by the jury."

Deloach v. Beaufort Gazette Sup.Ct. S.C., Op. No. 22090, April 30, 1984.

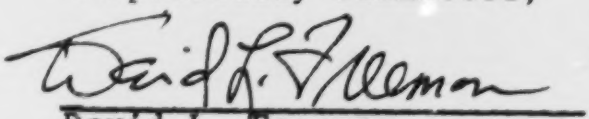
Instead of tackling the central issue squarely, the Respondent sought in its Brief in Opposition to Petition for

Writ of Certiorari to offer evidence in support of the jury verdict. In so doing, it ignored all of the evidence in the record that militated against the verdict. Bose does not allow such an approach. All of the evidence must be reviewed by the court and the review must be independent.

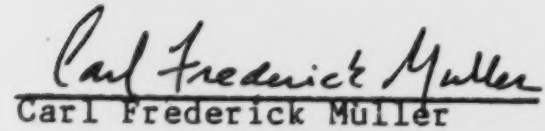
Although courts did review the evidence in libel and slander actions prior to the Bose case, it remained for Bose to articulate explicitly the full contours of the high requisite constitutional standard. The much lower standard applied by the South Carolina Supreme Court was erroneous and, accordingly, the judgment must be vacated and this case must be remanded for

further proceedings consistent with the Bose directive.

Respectfully submitted,



David L. Freeman



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